

Immigration Procedures

423.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to members of the Davis Police Department relating to immigration and interacting with federal immigration officials.

423.1.1 DEFINITIONS

The following definitions apply to this policy (Government Code § 7284.4):

Criminal immigration violation - Any federal criminal immigration violation that penalizes a person's presence in, entry, or reentry to, or employment in, the United States. This does not include any offense where a judicial warrant already has been issued.

Immigration enforcement - Any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, including any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a person's presence in, entry or reentry to, or employment in the United States.

Judicial warrant - An arrest warrant for a violation of federal criminal immigration law and issued by a federal judge or a federal magistrate judge.

423.2 POLICY

It is the policy of the Davis Police Department that members enforce the law fairly and equally, regardless of an individual's citizenship or immigration status. This will increase the effectiveness of the Department in protecting and serving the entire community and recognizing the dignity of all individuals, regardless of their status.

To encourage crime reporting and cooperation in the investigation of criminal activity, all individuals, regardless of their immigration status, must feel secure that contacting or being addressed by members of law enforcement will not automatically lead to immigration inquiry and/or deportation. Members will not seek out and prosecute individuals because of their immigration status, nor will members take immigration status into account when determining whether to detain a person or when enforcing criminal laws. Encounters involving individuals will be governed by the California Values Act. While it may be necessary to determine the identity of an individual, members shall treat all individuals equally and without regard to race, color or national origin in any way that would violate the United States or California Constitutions.

423.3 IMMIGRATION INQUIRIES PROHIBITED

Officers shall not inquire into an individual's immigration status for immigration enforcement purposes (Government Code § 7284.6).

423.3.1 CALIFORNIA LAW ENFORCEMENT TELECOMMUNICATIONS SYSTEM (CLETS)

Members shall not use information transmitted through CLETS for immigration enforcement purposes except for criminal history information and only when consistent with the California Values Act (Government Code § 15160).

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Members shall not use the system to investigate immigration violations of 8 USC § 1325 (improper entry) if that violation is the only criminal history in an individual's record (Government Code § 15160).

423.3.2 CALIFORNIA DEPARTMENT OF MOTOR VEHICLES

Members shall not obtain, access, use, or otherwise disclose noncriminal history information maintained by the DMV for immigration enforcement (Vehicle Code § 1808.48).

423.4 DETENTIONS AND ARRESTS

1. Members will enforce valid judicial warrants issued by California and Federal Courts (the judicial warrant must be signed by a neutral and detached magistrate and order the arrest of the person). Members will also enforce local, state and federal criminal laws under applicable Constitutional constraints without regard to legal immigration status.

2. Members may not detain a person solely to investigate immigration status or detain or arrest a person based on the following Department of Homeland and Security (DHS) detainer/warrants (see California Values Act - Government Code § 7284.6). These include:

- a. DHS Form I-247 Immigration Detainer – Notice of Action (I-247 detainer);
- b. DHS Form I-247A Immigration Notice – Notice of Action (I-247A detainer);
- c. DHS Form I-200 Warrant for Arrest of Alien (I-200 Warrant); or
- d. DHS Form I-205 Warrant of Removal/Deportation (I-205 Warrant)

3. Criminal Entry and Federal Offenses

An individual who enters into the United States illegally has committed a misdemeanor for their first offense and a felony for any subsequent offenses (8 USC § 1325(a)). DHS through Immigrations and Customs Enforcement (ICE) and Customs & Border Protection (CBP) enforce federal criminal entry laws. Members may not enforce criminal entry laws absent a judicial arrest warrant.

4. Civil Detainers and Civil Arrest Warrants

Generally, a person without citizenship who initially made a legal entry into the United States, but has remained beyond what is a legal period of time, has committed a federal civil offense. Additionally, a person without citizenship may be subject to civil deportation for committing certain crimes within the United States.

- a. ICE may issue I-247, I-247A, I-200 and I-205 detainers/warrants, which are civil administrative warrants to hold individuals in order to enforce federal removal orders or determine whether to initiate deportation proceedings under federal law. I-247, I-247A, I-200 and I-205 detainers/warrants are not judicial warrants, they are not court orders, and they are not issued by a neutral and detached magistrate as an arrest warrant is. They are unsworn documents that may be issued by a wide variety of immigration enforcement agents and deportation officers (8 C.F.R. § 287.7(b)). They are issued when a federal agent believes they have probable cause the subject is a removable alien. They do not represent a finding

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of a person's immigration status. The fact that ICE has issued a detainer does not mean that the subject is actually a non-citizen subject to deportation.

- b. Individuals will not be held in Davis PD custody solely on an I-247 or I-247A detainer or an I-200 or I-205 Warrant issued pursuant to 8 C.F.R. § 287.7.
- c. An officer cannot detain or arrest any individual, for any length of time, for a civil violation of federal immigration laws or related civil warrants. Detentions and warrantless arrests must be made in accordance with 4th Amendment requirements requiring reasonable suspicion and probable cause and in accordance with California law (CA TRUST ACT).

It is not necessary to notify ICE when booking arrestees at the Davis Police Department or at the Yolo County jail. Biometric notification is made through fingerprints at time of booking, which normally occurs at the Yolo County jail.

423.4.1 SUPERVISOR RESPONSIBILITIES

When notified that an officer has arrested an individual for violation of 8 USC § 1326(a) or under the authority of a judicial warrant, the supervisor should determine whether it is appropriate to:

- (a) Transfer the person to federal authorities.
- (b) Transfer the person to jail.

423.5 ICE REQUESTS FOR ASSISTANCE

1. General requests by ICE or any federal agency for assistance regarding immigration matters should be directed to a sworn police administrator (see California Values Act - Government Code § 7284.2 et seq.).
2. Requests for emergency assistance by ICE or any federal agency will be directed to the duty Watch Commander who will direct an appropriate response. The Watch Commander will provide administrative notification as soon as possible after receiving the request.
3. When conducting criminal investigations that are unrelated to immigration violations, in determining whether notification to, or cooperation with, ICE is appropriate, an officer should, in consultation with the Police Chief or the Deputy Police Chief, consider the totality of circumstances of each case, including, but not limited to:
 - a. Seriousness of the offense
 - b. Community safety
 - c. Potential burden on ICE or other federal agency
 - d. Impact on the community
4. A member may not interfere with ICE or any federal officer performing their duties.

423.6 INFORMATION SHARING

1. Information sharing with ICE and federal agencies shall be in accordance with local, state and federal laws.

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2. No individual who is otherwise ready to be released should continue to be detained solely for the purpose of sharing information with ICE.

423.6.1 IMMIGRATION DETAINER

No individual should be held based solely on a federal immigration detainer under 8 CFR 287.7 (Government Code § 7284.6).

Notification to a federal authority may be made prior to release of an individual who is the subject of a notification request only if the individual meets one of the following conditions (Government Code § 7282.5; Government Code § 7284.6):

- (a) The individual has been arrested and had a judicial probable cause determination for a serious or violent felony identified in Penal Code § 667.5(c) or Penal Code § 1192.7(c).
- (b) The individual has been arrested and had a judicial probable cause determination for a felony punishable by time in a state prison.
- (c) The individual has been convicted of an offense as identified in Government Code § 7282.5(a).
- (d) The individual is a current registrant on the California Sex and Arson Registry.
- (e) The individual is identified by the U.S. Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant.

423.6.2 NOTICE TO INDIVIDUALS (TRUTH ACT)

Individuals who are arrested on fresh criminal charges or pursuant to a valid arrest warrant will be timely released on a Notice-to Appear or taken to the Yolo County Jail as required by state law and department policy. Because individuals are not held at the Davis Police Department for more than a very limited period of time, the TRUTH Act has little to no application to Davis Police Department operations. In the event that ICE does make a direct request to hold or contact an individual who is in-custody at the Davis Police Department, the officer receiving the request shall contact the Police Chief or a Deputy Police Chief for further direction. Pursuant to Government Code § 7283.1, in all cases;

1. Individuals shall be given a copy of documentation received from ICE regarding a hold, notification or transfer request along with information as to whether the Police Department intends to comply with the request. Members will not hold a person on an I-247, I-247A, I-200 or I-205 detainer/warrant (see II, A. above).

2. If ICE is notified that an individual is being, or will be, released on a certain date, the same notification shall be provided in writing to the individual and to their attorney or to one additional person who the individual may designate.

3. The Davis Police Department will notify the City Council of the requirement to hold a community forum annually if the Police Department allows ICE access to any individual.

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4. Before any interview between ICE personnel and an individual in custody for civil immigration violations, the Davis Police Department shall provide the individual with a written consent form that explains the purpose of the interview, that the interview is voluntary and that he/she may decline to be interviewed or may choose to be interviewed only with his/her attorney present. The consent form must be available in the languages specified in Government Code § 7283.1.

423.6.3 ICE INTERVIEWS

Before any interview regarding civil immigration violations takes place between ICE personnel and an individual in custody, the Davis Police Department shall provide the individual with a written consent form that explains the purpose of the interview, that the interview is voluntary, and that he/she may decline to be interviewed or may choose to be interviewed only with their attorney present. The consent form must be available in the languages specified in Government Code § 7283.1.

Importantly, the Davis Police Department does not have the required consent forms. Individuals being held on fresh criminal charges should be taken to the Yolo County Jail or released on a Notice-to-Appear as required by California state law. It is a violation of the 4th Amendment to detain a person for ICE based solely on a civil federal offense regarding immigration so they can be interviewed.

423.6.4 TRANSFERS TO IMMIGRATION AUTHORITIES

Members shall not transfer an individual to immigration authorities unless one of the following circumstances exist (Government Code § 7282.5; Government Code § 7284.6):

- (a) Transfer is authorized by a judicial warrant or judicial probable cause determination.
- (b) The individual has been convicted of an offense as identified in Government Code § 7282.5(a).
- (c) The individual is a current registrant on the California Sex and Arson Registry.
- (d) The individual is identified by the U.S. Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant.

423.6.5 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

The Office of the Police Chief shall ensure that data regarding the number of transfers of an individual to immigration authorities, as permitted by Government Code § 7284.6(a)(4), and the offense that allowed for the transfer is collected and provided to the the Deputy Director of Police Services for required reporting to the DOJ (Government Code § 7284.6(c)(2))

423.7 U VISA AND T VISA NONIMMIGRANT STATUS

Under certain circumstances, federal law allows temporary immigration benefits, known as a U visa, to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U)).

Similar immigration protection, known as a T visa, is available for certain qualifying victims of human trafficking (8 USC § 1101(a)(15)(T)).

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3. Any request for assistance in applying for U visa or T visa status should be forwarded in a timely manner to the Police Chief. The Police Chief or the Deputy Police Chief shall:
- (a) Consult with the assigned investigator to determine the current status of any related case and whether further documentation is warranted.
 - (b) Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the certification or declaration has not already been completed and whether a certification or declaration is warranted.
 - (c) Address the request and complete the certification or declaration, if appropriate, in a timely manner.
 - (a) The instructions for completing certification and declaration forms can be found on the U.S. Department of Homeland Security (DHS) website.
 - (b) Form I-918 Supplement B certification shall be completed if the victim qualifies under Penal Code § 679.10 (multiple serious offenses). The certification shall be completed and not refused for the specified reasons in Penal Code § 679.10(k)(3).
 - (c) Form I-914 Supplement B declaration shall be completed if the victim qualifies under Penal Code § 236.5 or Penal Code § 679.11 (human trafficking). The declaration shall be completed and not refused for completion for the specified reasons in Penal Code § 679.11(j)(3).
 - (d) Forward the completed Form I-918 Supplement B certification or completed Form I-914 declaration B to the victim, family member, or authorized representative (as defined in Penal Code § 679.10 and Penal Code § 679.11) without requiring the victim to provide government-issued identification (Penal Code § 679.10; Penal Code § 679.11)
 - (d) Ensure that any decision to complete, or not complete, a certification or declaration form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed form in the case file.
 - (a) If Form I-918 Supplement B is not certified, a written explanation of denial shall be provided to the victim or authorized representative. The written denial shall include specific details of any reasonable requests for cooperation and a detailed description of how the victim refused to cooperate (Penal Code § 679.10).
 - (e) Inform the victim liaison of any requests and their status.

[See attachment: T-Visa-Law-Enforcement-Resource-Guide.pdf](#)

423.7.1 TIME FRAMES FOR COMPLETION

1. T visa applications shall be completed and processed within 15 business days of the first encounter with the victim, regardless of whether it is requested by the victim (California Penal Code §§ 236.1 & 236.5).
2. T and U visa requests shall be processed pursuant to Penal Code § 679.10 and Penal Code § 679.11 within 30 days of a request from the victim or victim's family related to one of their assigned

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cases. If the victim is in removal proceedings, the certification shall be processed within 7 days of the request.

423.7.2 POLICE REPORTS

Upon request, an officer or supervisor should provide a victim or authorized representative with a copy of the report filed by the victim within seven days of the request (Penal Code § 679.10).

423.7.3 REPORTING TO LEGISLATURE

The Police Chief or the authorized designee should ensure that certification requests are reported to the Legislature in January of each year and include the number of certifications signed and the number denied. The report shall comply with Government Code § 9795 (Penal Code § 679.10; Penal Code § 679.11).

423.8 TRAINING

The Professional Standards Lieutenant should ensure that all appropriate members receive training on immigration issues.

Training should include:

- (a) Identifying civil versus criminal immigration violations.
- (b) Factors that may be considered in determining whether a criminal immigration violation has been committed.
- (c) Prohibitions contained in the California Values Act (Government Code § 7284 et seq.).

423.9 FOOTNOTE RESOURCES

Government Code § 7284.6.

(a) California law enforcement agencies shall not:

(1) Use agency or department moneys or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, including any of the following:

(A) Inquiring into an individual's immigration status.

(B) Detaining an individual on the basis of a hold request.

(C) Providing information regarding a person's release date or responding to requests for notification by providing release dates or other information unless that information is available to the public, or is in response to a notification request from immigration authorities in accordance with Section 7282.5. Responses are never required, but are permitted under this subdivision, provided that they do not violate any local law or policy.

(D) Providing personal information, as defined in Section 1798.3 of the Civil Code, about an individual, including, but not limited to, the individual's home address or work address unless that information is available to the public.

(E) Making or intentionally participating in arrests based on civil immigration warrants.

(F) Assisting immigration authorities in the activities described in Section 1357(a)(3) of Title 8 of the United States Code.

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- (G) Performing the functions of an immigration officer, whether pursuant to Section 1357(g) of Title 8 of the United States Code or any other law, regulation, or policy, whether formal or informal.
- (2) Place peace officers under the supervision of federal agencies or employ peace officers deputized as special federal officers or special federal deputies for purposes of immigration enforcement. All peace officers remain subject to California law governing conduct of peace officers and the policies of the employing agency.
- (3) Use immigration authorities as interpreters for law enforcement matters relating to individuals in agency or department custody.
- (4) Transfer an individual to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination, or in accordance with Section 7282.5.
- (5) Provide office space exclusively dedicated for immigration authorities for use within a city or county law enforcement facility.
- (6) Contract with the federal government for use of California law enforcement agency facilities to house individuals as federal detainees, except pursuant to Chapter 17.8 (commencing with Section 7310).
- (b) Notwithstanding the limitations in subdivision (a), this section does not prevent any California law enforcement agency from doing any of the following that does not violate any policy of the law enforcement agency or any local law or policy of the jurisdiction in which the agency is operating:
- (1) Investigating, enforcing, or detaining upon reasonable suspicion of, or arresting for a violation of, Section 1326(a) of Title 8 of the United States Code that may be subject to the enhancement specified in Section 1326(b)(2) of Title 8 of the United States Code and that is detected during an unrelated law enforcement activity. Transfers to immigration authorities are permitted under this subsection only in accordance with paragraph (4) of subdivision (a).
- (2) Responding to a request from immigration authorities for information about a specific person's criminal history, including previous criminal arrests, convictions, or similar criminal history information accessed through the California Law Enforcement Telecommunications System (CLETS), where otherwise permitted by state law.
- (3) Conducting enforcement or investigative duties associated with a joint law enforcement task force, including the sharing of confidential information with other law enforcement agencies for purposes of task force investigations, so long as the following conditions are met:
- (A) The primary purpose of the joint law enforcement task force is not immigration enforcement, as defined in subdivision (f) of Section 7284.4.
- (B) The enforcement or investigative duties are primarily related to a violation of state or federal law unrelated to immigration enforcement.
- (C) Participation in the task force by a California law enforcement agency does not violate any local law or policy to which it is otherwise subject.
- (4) Making inquiries into information necessary to certify an individual who has been identified as a potential crime or trafficking victim for a T or U Visa pursuant to Section 1101(a)(15)(T) or 1101(a)(15)(U) of Title 8 of the United States Code or to comply with Section 922(d)(5) of Title 18 of the United States Code.

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(5) Giving immigration authorities access to interview an individual in agency or department custody. All interview access shall comply with requirements of the TRUTH Act (Chapter 17.2 (commencing with Section 7283)).

(c)

(1) If a California law enforcement agency chooses to participate in a joint law enforcement task force, for which a California law enforcement agency has agreed to dedicate personnel or resources on an ongoing basis, it shall submit a report annually to the Department of Justice, as specified by the Attorney General. The law enforcement agency shall report the following information, if known, for each task force of which it is a member:

(A) The purpose of the task force.

(B) The federal, state, and local law enforcement agencies involved.

(C) The total number of arrests made during the reporting period.

(D) The number of people arrested for immigration enforcement purposes.

(2) All law enforcement agencies shall report annually to the Department of Justice, in a manner specified by the Attorney General, the number of transfers pursuant to paragraph (4) of subdivision (a), and the offense that allowed for the transfer, pursuant to paragraph (4) of subdivision (a).

(3) All records described in this subdivision shall be public records for purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250)), including the exemptions provided by that act and, as permitted under that act, personal identifying information may be redacted prior to public disclosure. To the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation, or would endanger the successful completion of the investigation or a related investigation, that information shall not be disclosed.

(4) If more than one California law enforcement agency is participating in a joint task force that meets the reporting requirement pursuant to this section, the joint task force shall designate a local or state agency responsible for completing the reporting requirement.

(d) The Attorney General, by March 1, 2019, and annually thereafter, shall report on the total number of arrests made by joint law enforcement task forces, and the total number of arrests made for the purpose of immigration enforcement by all task force participants, including federal law enforcement agencies. To the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation, or would endanger the successful completion of the investigation or a related investigation, that information shall not be included in the Attorney General's report. The Attorney General shall post the reports required by this subdivision on the Attorney General's Internet Web site.

(e) This section does not prohibit or restrict any government entity or official from sending to, or receiving from, federal immigration authorities, information regarding the citizenship or immigration status, lawful or unlawful, of an individual, or from requesting from federal immigration authorities immigration status information, lawful or unlawful, of any individual, or maintaining or exchanging that information with any other federal, state, or local government entity, pursuant to Sections 1373 and 1644 of Title 8 of the United States Code.

(f) Nothing in this section shall prohibit a California law enforcement agency from asserting its own jurisdiction over criminal law enforcement matters.

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No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (U.S. Const. 14th Amend.)

Detainers

<https://www.ice.gov/doclib/secure-communities/pdf/immigration-detainer-form.pdf>

<https://www.ice.gov/sites/default/files/documents/Document/2017/I-247A.pdf>

https://www.ice.gov/sites/default/files/documents/Document/2017/I-200_SAMPLE.PDF

https://www.ice.gov/sites/default/files/documents/Document/2017/I-205_SAMPLE.PDF

<https://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf>

Immigration detainers are not the same as criminal detainers governed by the Interstate Agreement on Detainers (Government Code § 7282 & Penal Code § 1389). Criminal detainers do not request or purport to authorize additional time in custody; they are lodged when a prisoner has actual criminal charges pending in a different jurisdiction, and the statutes provide prisoners with a prompt procedural mechanism for disputing or resolving those pending charges. Immigration detainers, in contrast, are lodged when there may be no pending immigration proceedings; they ask the custodian to extend a person's time in custody, and they lack any due process mechanisms that persons can invoke to contest the extended custody.

A law enforcement official shall have discretion to cooperate with immigration authorities only if doing so would not violate any federal, state, or local law, or local policy, and where permitted by the California Values Act (Chapter 17.25 (commencing with Section 7284)). See also Trust Act - Government Code § 7282.5. State and local participation in federal immigration enforcement programs raises constitutional concerns, including the prospect that California residents could be detained in violation of the Fourth Amendment to the United States Constitution, targeted on the basis of race or ethnicity in violation of the Equal Protection Clause, or denied access to education based on immigration status. See *Sanchez Ochoa v. Campbell, et al.* (E.D. Wash. 2017) 2017 WL 3476777; *Trujillo Santoya v. United States, et al.* (W.D. Tex. 2017) 2017 WL 2896021; *Moreno v. Napolitano* (N.D. Ill. 2016) 213 F. Supp. 3d 999; *Morales v. Chadbourne* (1st Cir. 2015) 793 F.3d 208; *Miranda-Olivares v. Clackamas County* (D. Or. 2014) 2014 WL 1414305; *Galarza v. Szalczyk* (3d Cir. 2014) 745 F.3d 634. The Fourth Amendment requires that seizures be objectively reasonable in light of the facts and circumstances. *Graham v. Connor*, 490 US 386, 397 (1989). Prolonged detention after a seizure, such as full custodial confinement (arrest) without an arrest warrant, must be based on probable cause that a crime has been committed. *United States v. Ayarza*, 874 F.2d 647, 650 (9th Cir 1989), citing *Florida v. Royer*, 460 US 491, 503 (1983). Absent probable cause to arrest a person for crime, a detention for an ICE detainer alone does not demonstrate probable cause to hold a person. *Miranda Olivares v. Clackamas County*, 2014 WL 1414305 (District of Oregon, 2014). An ICE detainer specifies that an investigation "has

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been initiated" to determine whether she was subject to removal from the United States. *Arizona v. United States*, 132 S Ct at 2509 ("Detaining individuals solely to verify their immigration status would raise constitutional concerns.").

7282.5. (a) A law enforcement official shall have discretion to cooperate with immigration authorities only if doing so would not violate any federal, state, or local law, or local policy, and where permitted by the California Values Act (Chapter 17.25 (commencing with Section 7284)). Additionally, the specific activities described in subparagraph (C) of paragraph (1) of subdivision (a) of, and in paragraph (4) of subdivision (a) of, Section 7284.6 shall only occur under the specified circumstances.

In addition to immigration enforcement, ICE also investigates the illegal movement of people and goods and helps prevent terrorism. <https://www.ice.gov/>.

No member of this Department will prohibit, or in any way restrict, any other member from doing any of the following regarding the citizenship or immigration status, lawful or unlawful, of any individual (8 USC § 1373):

1. Sending information to, or requesting or receiving such information from ICE.
2. Maintaining such information in Department records.
3. Exchanging such information with any other federal, state or local government entity.

Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States. (8 USC § 1664).

<https://www.dhs.gov/publication/u-visa-law-enforcement-certification-resource-guide>

Attachments

PP 2.43-AA T-Visa-Law- Enforcement-Resource-Guide.pdf



T VISA LAW ENFORCEMENT RESOURCE GUIDE

For Federal, State, Local, Tribal and Territorial
Law Enforcement, Prosecutors, Judges and
other Government Agencies



**Homeland
Security**



**U.S. Citizenship
and Immigration
Services**

IMPLEMENTING A VICTIM-CENTERED APPROACH

DHS strives to use a trauma-informed, victim-centered approach to combat human trafficking.

This approach includes practices to minimize victimization and additional trauma, and equally values:

- The identification and stabilization of victims, including providing immigration relief, and
- The detection, investigation, and prosecution of perpetrators of human trafficking.

Noncitizens who have been victimized often:

- Distrust law enforcement, and fear arrest and deportation;
- Fear for themselves and family members;
- Worry about immediate needs (food, shelter, family);
- Have medical needs, including psychological support;
- Are confused about the T visa process; and
- May face language and cultural barriers.

When encountering victims of human trafficking, it is critical to develop rapport and establish trust by:

- Connecting the victim to a victim assistance specialist who can connect the victim to support services;
- Explaining your role, answering their questions, and addressing their fears and urgent needs;
- Being sensitive to cultural differences and language barriers and using a competent interpreter when needed;
- Conducting interviews in a neutral location, away from suspected perpetrators, and only after the victim's urgent needs have been met; and
- Being patient and giving the victim time to stabilize and trust you.

For more information and strategies for implementing a victim-centered approach, go to: <https://www.dhs.gov/blue-campaign/victim-centered-approach>, <https://www.ice.gov/doclib/human-trafficking/ccht/continuedPresenceToolkit.pdf> and https://www.dhs.gov/sites/default/files/publications/20_0115_plcy_human-trafficking-forced-labor-child-exploit-strategy.pdf.

T VISA QUICK REFERENCE GUIDE

Why are T Visas Important?

- They offer stabilization, protection and immigration relief to victims of trafficking
- They strengthen law enforcement’s ability to **detect, investigate, and prosecute human trafficking.**

How Does a Victim Qualify for a T Visa?

- ⊙ The applicant must establish that they:
 - Are a victim of a severe form of trafficking in persons (see sidebar);
 - Are physically present in the U.S., American Samoa, the Commonwealth of the Northern Mariana Islands, or at a port of entry, on account of trafficking;
 - Cooperated with any reasonable requests for assistance from law enforcement, or qualify for an exemption due to age or an exception due to trauma suffered;
 - Would suffer extreme hardship involving unusual and severe harm if removed from U.S.; and
 - Are admissible to the U.S., or qualify for a waiver of applicable inadmissibility grounds.

How Many T Visas are Available Each Fiscal Year?

- There are 5,000 visas available to principal victims of trafficking.
- The T visa annual cap has never been reached.

What Does a T Visa Provide?

- Immigration status for up to 4 years for principal victims, with the option to include family members;
- Employment authorization (work permit); and
- Access to certain federal benefits and services.

Who Can Complete Form I-914B?

- Any federal, state, tribal, territorial, or local law enforcement agency, prosecutor, judge, labor agency, children’s protective services agency, or other authority that has responsibility to detect, investigate, or prosecute acts of trafficking, or convict or sentence the trafficker.

What are the Benefits of Completing the Form I-914B?

- Part of a victim-centered approach.
- An optional form of evidence for applicants to demonstrate victimization and cooperation with law enforcement.
- Creates trust within your community.
- Encourages others to report human trafficking.

What is the Certifying Agency’s Role in the T Visa Process?

- Identifies victims of trafficking.
- Detects, investigates, and/or prosecutes acts of trafficking.
- Completes and signs Form I-914 Supplement B.

HUMAN TRAFFICKING INVOLVES THE EXPLOITATION OF AN INDIVIDUAL

⊙ Sex Trafficking is the:

- Recruitment;
- Harboring;
- Transportation;
- Providing;
- Obtaining;
- Patronizing; or
- Soliciting,

of a person **for the purpose of a commercial sex act** through the use of

- Force;
- Fraud; or
- Coercion.

Anyone under the age of 18 who is induced into commercial sex is a trafficking victim, even without the use of force, fraud or coercion.

⊙ Labor Trafficking is the:

- Recruitment,;
- Harboring;
- Transportation;
- Providing; or
- Obtaining,

of a person for labor or services through the use of

- Force;
- Fraud; or
- Coercion,

for the purpose of **subjection to:**

- Involuntary servitude;
- Peonage;
- Debt bondage; or
- Slavery.

⊙ Have Questions?

⊙ Need help with the Supplement B?

Call the U and T Visa Hotline for Certifying Agency Inquiries:

(240) 721 3333 *This line is for certifying agencies only*



U.S. Citizenship and Immigration Services

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The information provided in this Guide is intended for general educational purposes. It is not intended to provide legal advice. The information in this Guide may or may not apply to individual circumstances. Readers should review local policies and seek legal counsel regarding any specific applications of federal and state laws. This Guide supersedes all previous versions of joint U/T Visa Law Enforcement Guides. A separate [U Visa Law Enforcement Guide](https://www.dhs.gov/sites/default/files/publications/20_1228_uscis_u-visa-law-enforcement-resource-guide.pdf) can be viewed at: https://www.dhs.gov/sites/default/files/publications/20_1228_uscis_u-visa-law-enforcement-resource-guide.pdf

INTRODUCTION

Human trafficking victims are often reluctant to report their victimization to law enforcement due to their nationality, cultural background, immigration status, and fear of removal from the United States.

Congress enacted the Trafficking Victims Protection Act (TVPA), part of the Victims of Trafficking and Violence Protection Act of 2000 to protect victims of trafficking. Recognizing the need for better protections for victims of trafficking, the TVPA created specific immigration benefits for this population, including T nonimmigrant status (also known as the “T visa”). The TVPA was also enacted to strengthen the ability of law enforcement agencies to investigate and prosecute serious crimes, including trafficking in persons, by building trust between law enforcement and immigrant communities.

U.S. Citizenship and Immigration Services (USCIS) is the federal agency within the U.S. Department of Homeland Security (DHS) that adjudicates immigration and citizenship benefit requests. USCIS has sole jurisdiction to determine who is eligible for a T visa. Law enforcement agencies, also known as certifying agencies, can play an important role by submitting a declaration to support victims of human trafficking. The declaration is an optional form of evidence in the T visa application process. This guide provides information on the following topics:

- The T visa requirements;
- The role of Form I-914 Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (Form I- 914B);
- Best practices for certifying agencies;
- Responses to frequently asked questions; and
- Additional resources for certifying agencies and officials.

IN THIS GUIDE



A brief overview of the T visa program, law enforcement agency roles and responsibilities, and what you need to know before during, and after signing the declaration



Resources to support you, including contact information, best practices, and links to additional information



Answers to frequently asked questions from law enforcement about the declaration process

DID YOU KNOW?

- Ⓞ There are 5,000 visas available for eligible victims of trafficking each fiscal year, but the cap has never been reached.¹
- Ⓞ A Law Enforcement Agency includes any agency that has the responsibility and authority to detect, investigate, and/or prosecute human trafficking.²

1. INA § 214(o)(2); 8 U.S.C. § 1184(o)(2); 8 CFR 214.11(j).

2. 8 CFR 214.11(a).

OVERVIEW

The T visa was designed with the dual purpose of stabilizing trafficking victims and promoting cooperation between law enforcement and trafficking victims. The T visa encourages human trafficking victims to report their victimization to law enforcement and enables victims to participate in the detection, investigation or prosecution of the crimes committed against them, even if they lack lawful immigration status.

T visas are a useful tool for law enforcement agencies to combat human trafficking, and a means for victims of human trafficking to rebuild their lives.

Once granted a T visa, eligible victims of human trafficking may:

- Live and work in the U.S. for a period of 4 years;
- Access certain [federal benefits and services](#);³
- Apply for certain qualifying family members to receive T visas; and
- Apply for lawful permanent residency (also known as a Green Card) if eligible.

Roles and Responsibilities

LAW ENFORCEMENT

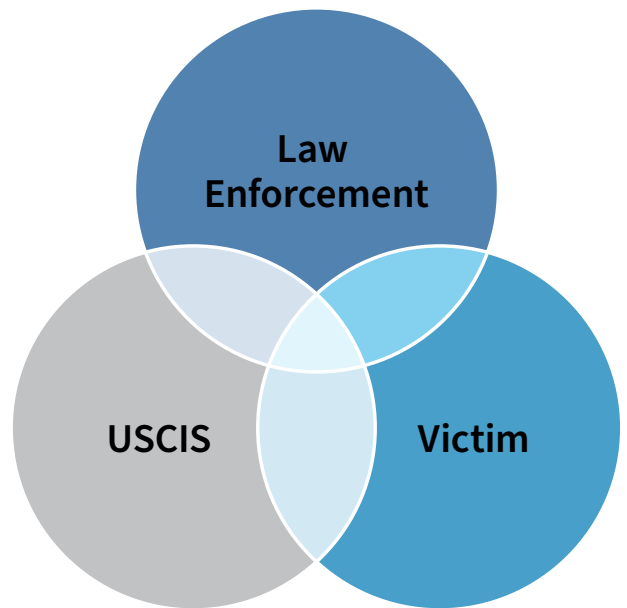
- Identifies victims of human trafficking
- Detects, investigates, and/or prosecutes the crime of human trafficking.
- Completes Form I-914B and confirms how the victim complied with reasonable requests for assistance or explains why the victim qualifies for an exception.

VICTIM

- Complies with reasonable requests for assistance from law enforcement into the detection, investigation, or prosecution⁴ of human trafficking or qualifies for an exception.
- Completes and submits Form I-914, Application for T Nonimmigrant Status.
- Submits Form I-914B as part of their T visa filing to USCIS.

USCIS

- Determines whether the applicant is eligible for T nonimmigrant status. Requests additional information from the applicant and law enforcement as necessary to make an eligibility determination.
- Grants T nonimmigrant status and extensions of status, and issues work permits and Green Cards to victims of trafficking.



3. Such benefits may include assistance with housing, medical services, and employment. For a complete list, please refer to <https://www.acf.hhs.gov/otip/victim-assistance/services-available-to-victims-of-trafficking>.

4. THE TERM “INVESTIGATION OR PROSECUTION” ENCOMPASSES ALL STAGES OF THE JUDICIAL PROCESS: DETECTION, INVESTIGATION, PROSECUTION, CONVICTION, AND SENTENCING.

ELIGIBILITY REQUIREMENTS

USCIS may find an applicant eligible for a T visa if the individual:

Is the victim of a severe form of trafficking in persons

Is physically present in the United States⁵, American Samoa, the Commonwealth of the Northern Mariana Islands or at a U.S. port of entry on account of trafficking.

Would suffer extreme hardship involving unusual and severe harm if removed from the U.S.

Has complied with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking or qualifies for an exception.

Is admissible to the United States based on a review of criminal history, immigration violations, and other factors, or is eligible for a waiver of applicable grounds of inadmissibility.

This guide focuses on the eligibility requirements *highlighted in blue*, as the law enforcement declaration focuses on these areas.

Victim of A Severe Form of Trafficking in Persons

In order to establish eligibility for a T visa, the applicant must demonstrate that they are the victim of a “severe form of trafficking in persons,”⁶ a term defined in Federal statute and in DHS regulations. A severe form of trafficking in persons by definition includes the following forms of trafficking and does not require any separate analysis of the severity of the trafficking:

Sex trafficking⁷, which is defined as the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act through the use of force, fraud, or coercion. Anyone under the age of 18 who is induced into commercial sex is a victim of sex trafficking under U.S. law, regardless of whether there is force, fraud or coercion because minors are legally incapable of consenting to commercial sex acts.

Forced labor⁸ or **labor trafficking**, which is defined as the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

- *Involuntary servitude* includes a condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint, or a condition of servitude induced by the abuse or threatened abuse of the legal process.⁹
- *Debt bondage* means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.¹⁰

5. The United States includes the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and the Commonwealth of the Northern Mariana Islands. See INA 101(a)(38). See 8 CFR 214.11(a).

6. See [8 CFR 214.11\(a\)](#).

7. See [8 CFR 214.11\(a\)](#).

8. Forced labor is commonly referred to as labor trafficking. [See 8 CFR 214.11\(a\)](#).

9. See [8 CFR 214.11\(a\)](#).

10. 8 CFR 214.11(a).

- *Peonage* means a status or condition of involuntary servitude based upon real or alleged indebtedness.¹¹
- Slavery is the state of being held under the complete and total ownership or control of another individual or entity and deprived of liberty, autonomy, and independence for the purpose of subjecting the victim to forced labor or services.

Physically Present in the United States on Account of Trafficking

Law enforcement is not responsible for determining whether the applicant is physically present in the United States on account of trafficking. However, in some circumstances, victims may ask law enforcement to provide evidence of their physical presence in the United States. The victim must demonstrate to USCIS that they are in the United States on account of trafficking at the time of applying for the T visa. The requirement to demonstrate physical presence in the United States can be satisfied if the victim:

- Is present in the United States because the victim is currently being subjected to a severe form of trafficking in persons;
- Was liberated from a severe form of trafficking in persons by a law enforcement agency;
- Escaped a severe form of trafficking in persons before a law enforcement agency was involved;
- Was subject to a severe form of trafficking in persons at some point in the past and the victim's continuing presence in the United States is directly related to the original trafficking in persons; or
- Is present on account of having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or perpetrator of trafficking.

Extreme Hardship if Removed from the United States

The victim must establish that they would experience extreme hardship, involving unusual and severe harm, if they were removed from the United States. Law enforcement is not responsible for determining if the applicant would experience extreme hardship.

USCIS considers a variety of factors when evaluating extreme hardship, including the victimization the applicant has suffered, the impact of the loss of access to U.S. criminal justice system, and the political and economic conditions in the country of return. The outcome of the analysis will depend on the facts and circumstances of each case.

11. 8 CFR 214.11(a).

COMPLIANCE WITH REASONABLE REQUEST FROM LAW ENFORCEMENT

The victim is generally responsible for complying with reasonable requests for assistance related to the detection, investigation, or prosecution of the trafficking. For example, aiding in the detection of trafficking by reporting the victimization is sufficient to satisfy the requirement to assist law enforcement. There are two occasions when a victim may be eligible for a T visa even if the victim does not report the trafficking to or assist law enforcement: (1) if the victim was under the age of 18 at the time of victimization or (2) if the victim has experienced physical or psychological trauma that prevents them from complying with a reasonable request.

USCIS will assess the evidence provided by the applicant to determine whether the individual has complied with reasonable requests for assistance. USCIS will consider multiple factors and the totality of circumstances when determining whether a request was “reasonable.”

One of the primary ways that a victim may demonstrate cooperation with reasonable requests from law enforcement is by providing the law enforcement declaration, Form I-914B, as part of the victim’s T visa application. Any law enforcement agency that has the responsibility and authority for the detection, investigation, and/or prosecution of severe forms of

trafficking in persons, including Federal, State, local or tribal law enforcement agencies, prosecutors, judges, labor agencies and children’s protective services agencies, can complete Form I-914B.

Law enforcement agencies are uniquely positioned to assess a victim’s credibility, as they have firsthand knowledge of the investigation or prosecution into the acts of trafficking. Therefore, law enforcement agencies can verify whether the reported crime occurred and confirm a victim’s cooperation. Victims (or their attorneys or representatives) may approach you to request a signed declaration. The Form I-914B is not required to establish eligibility for a T visa, but it provides useful information for USCIS to consider when determining a victim’s eligibility.

Your agency may choose to sign Form I-914B even if the victim has not responded to reasonable requests for assistance. Signing Form I-914B in these circumstances may help to stabilize the victim, and thereby strengthen your ability to investigate or prosecute the acts of trafficking in the future. In these instances, it is helpful to provide a detailed description of any attempts made to obtain victim assistance, the results of those attempts, and any physical or psychological trauma that you are aware of that might prevent complying with a reasonable request.

After the T visa application has been approved, a victim’s refusal to comply with your reasonable requests for assistance in the investigation or prosecution may impact the victim’s ability to become a permanent resident and/or may result in revocation of the T visa.

Part D. Cooperation of Victim *(Attach additional sheets, if necessary)*

The applicant:

- Has complied with requests for assistance in the investigation/prosecution of the crime of trafficking. *(Explain below.)*
- Has failed to comply with requests to assist in the investigation/prosecution of the crime of trafficking. *(Explain below.)*
- Has not been requested to assist in the investigation/prosecution of any crime of trafficking.
- Has not yet attained the age of 18.
- Other, specify on attached additional sheets.

ADMISSIBILITY

The victim must demonstrate to USCIS that they are admissible to the United States. **Law enforcement is not responsible for making this determination.** USCIS determines admissibility based on a victim’s immigration and criminal history. Certain inadmissibility grounds may be waived, including criminal grounds that are directly tied to the acts of trafficking. Victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation, or working without documentation.¹² Consequently, USCIS considers the relationship between a victim’s criminal history and the trafficking they have experienced.

12. Victims of Trafficking and Violence Protection Act of 2000, Public Law No. 106-386, Section 102(19), (October 28, 2000).

CERTIFICATION TIPS

Completing Form I-914B does not automatically confer eligibility for a T visa. USCIS will carefully evaluate all evidence provided in a T visa application, including Form I-914B, if submitted, and any attached documents, and make a determination.

FORM I-914B

- Is officially known as USCIS Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim in Trafficking of Persons.
 - May also be referred to as a certification or declaration.
 - Confirms law enforcement’s view that the applicant is a trafficking victim.
 - **Provides valuable evidence of the victim’s cooperation** but is not required to establish eligibility for a T visa.
 - Is completed as part of a victim-centered approach to combat human trafficking.
-
- Ⓞ **No Specific Stage Necessary:** There is no requirement that the trafficking case reach a specific stage of the criminal process for you to sign the Form I-914B. Charges do not have to be filed, nor does an investigation need to be open at the time a certification is signed. Even if an investigation occurs or charges are filed, the investigation or charges do not have to relate directly to the acts of trafficking and may include other criminal activity.
 - Ⓞ **Officials With Signing Authority:** The supervising official responsible for the detection, investigation, or prosecution of severe forms of trafficking in persons at your law enforcement agency must sign Form I-914B. You are the supervising official of your agency if you are in a supervisory role and your agency has designated you a “supervising official.” There is also an area designated on the declaration for the signature of a law enforcement officer who is directly familiar with the case.
 - Ⓞ **Answer All Questions on Form I-914B:** USCIS encourages you to answer all Form I-914B questions factually and as fully as possible to assist in determining the applicant’s eligibility for the T visa.
 - Ⓞ **Timing:** The applicant should submit Form I-914B with their initial T visa filing. T visa declarations do not expire.

TOP FIVE

THINGS TO KNOW ABOUT FORM I-914B



1 Provides Valuable Evidence for Victims

By completing and signing the declaration, you, as the certifying agency, are providing valuable evidence that may help the victim obtain a T visa. While the declaration is not required evidence for the victim, it is very useful to USCIS while evaluating the applicant's eligibility for the T visa.

1

2

2 Signing Means Attesting to the Facts

By signing the declaration, you are stating:

- To the best of your knowledge, the individual is a victim of human trafficking.
- The victim has complied with reasonable requests to assist law enforcement (or is exempt due to age or trauma).
- The information listed on the declaration is accurate to the best of your knowledge.
- You have direct knowledge of the information listed (or have reviewed relevant records).

Note: Signing Form I-914B does not confer a T visa. USCIS, not law enforcement, makes a determination on the victim's eligibility for immigration benefits.

3

3 Who Completes the Form Matters

The certifying official should complete Form I-914B. Only sign if you are (1) a supervisory official responsible for the detection, investigation, or prosecution of human trafficking or (2) a law enforcement officer with direct knowledge of the case.

Note: Federal, state, local, tribal, or territorial judges also have authority to sign the Form I-914B.

4

4 Investigation and Prosecution is Not Required

Whether an act of trafficking is formally investigated or prosecuted depends on many factors outside of the victim's control. If your agency has identified an individual as a victim of trafficking, you can choose to complete and sign the Form I-914B. There is no requirement that an investigation or prosecution be initiated or completed after the victim reports the trafficking and makes themselves available to comply with reasonable requests for assistance.

5

5 Signing Form I-914B is Discretionary

Signing Form I-914B may strengthen your certifying agency's ability to detect, investigate, and prosecute trafficking crimes. However, there is no obligation under federal law to complete and sign Form I-914B. Under federal law, your certifying agency has discretion over whether to complete a declaration.

BEST PRACTICES

FOR CERTIFYING AGENCIES AND OFFICIALS



PROVIDE SPECIFIC DETAILS

USCIS seriously considers the information you provide on Form I-914B. Please be as specific and detailed as possible when completing the form.

Note: Completing Form I-914B does not automatically confer a T visa. USCIS will assess the applicant's eligibility by evaluating the evidence provided by the victim, including the information you provide on Form I-914B as well as supplemental evidence provided by the victim.

VERIFY ALL INFORMATION ON THE FORM PRIOR TO SIGNING

Your agency should fully complete the declaration. Prior to signing, please ensure that all information is accurate.

ATTACH ADDITIONAL RELEVANT DOCUMENTS – AND NOTE THIS ON FORM I-914 B

If available, provide additional relevant documents (for example statements, photos, etc.) along with the declaration. Please note on Form I-914B if your agency has attached additional documents in case the documents are accidentally separated from Form I-914B.

ESTABLISH AND PERIODICALLY UPDATE LOCAL PROCEDURES AND POLICIES

Certifying agencies are not required to have an internal policy or procedure before they can sign a T visa declaration. However, USCIS encourages certifying agencies to develop a policy and to train relevant personnel on the policy to promote consistency and transparency and to improve the quality of the declaration. Some suggested topics to cover in your internal policy include:

- Developing a mechanism to track declaration requests and create a historical record of declarations provided; and
- Outlining expectations regarding attaching relevant police reports and other documentation regarding the victimization and the victim to Form I-914B.

PROVIDE AN ORIGINAL INK SIGNATURE

You must provide an original signature on Form I-914B in any ink color for verification purposes. USCIS cannot accept photocopies, faxes, or scans of Form I-914B.

RETURN THE FORM I-914B TO THE VICTIM (OR THE VICTIM'S ATTORNEY OR REPRESENTATIVE)

You should not send the signed declaration directly to USCIS. If the victim is including a signed Form I-914B, the victim must send it to USCIS with the complete Form I-914 application.

ANSWERS

TO QUESTIONS FREQUENTLY ASKED BY CERTIFYING OFFICIALS



WHO DECIDES WHETHER A VICTIM SHOULD APPLY FOR A T VISA?

The victim, who may sometimes be assisted by an attorney or victim service provider, should make that decision.

How does USCIS determine whether the applicant is eligible for the T visa?

USCIS examines the totality of the evidence in each individual case. In addition to determining whether the applicant has satisfied the requirements for the T visa, and is otherwise admissible to the U.S., USCIS conducts a full background check and reviews the signed Form I-914B when submitted.

CAN I CERTIFY FORM I-914B IF A PROSECUTION HAS NOT OCCURRED?

Yes. The decision to complete Form I-914B is within your agency's discretion. There is no requirement that an investigation or prosecution be initiated or completed after the victim has reported the trafficking and has been available for reasonable requests for assistance (or qualifies for an exception due to age or exemption due to trauma). You can sign a Form I-914B regardless of the stage of the investigation or prosecution. Charges do not have to be filed, nor does an investigation need to be open at the time a certification is signed.

CAN I CERTIFY A FORM FOR A TRAFFICKING VICTIM WHO ASSISTED MY LAW ENFORCEMENT AGENCY IF I AM NOT SURE THE INDIVIDUAL IS ELIGIBLE FOR THE T VISA?

Yes, it is consistent with a victim-centered approach for federal, state, tribal, territorial, and local law enforcement to sign the T visa declaration when a victim who is assisting or assisted in the investigation or prosecution of a trafficker makes a request. USCIS, not law enforcement, must determine the applicant's eligibility for T nonimmigrant status. While providing a certification is in the discretion of the LEA under federal law, certifying agencies may be subject to state and local policies that cover the certification process, depending on the specific jurisdiction.

CAN I CERTIFY A FORM FOR A TRAFFICKING VICTIM WHO IS NO LONGER IN THE U.S.?

Yes, the decision to certify is within the certifying agency's discretion. USCIS will determine whether the victim meets the physical presence requirement. While the T visa requires that a victim be in the

U.S. on account of the severe form of human trafficking, victims who have left the U.S. may be allowed to re-enter to assist with an investigation or prosecution. Victims who have left the U.S. may also be eligible for a U visa, as trafficking is a qualifying criminal activity in the U visa program.

CAN I APPLY FOR CONTINUED PRESENCE FOR THE VICTIM IF THEY ALSO HAVE A PENDING T VISA APPLICATION?

Yes. Filing for Continued Presence (CP) utilizes the victim-centered approach and allows for the support and stabilization of the victim while their I-914 is being processed by USCIS. CP also helps build rapport and establish trust between you and the victim. See the DHS Center for Countering Human Trafficking [Continued Presence Resource Guide](#) and [Continued Presence Toolkit](#) or more information on submitting Continued Presence requests for trafficking victims.

WHAT SHOULD I DO IF THE VICTIM IS IN REMOVAL PROCEEDINGS BUT WANTS TO FILE A T VISA?

Victims may choose to apply for immigration benefits, including the T visa, even while they are in immigration court proceedings. The fact that the victim is in removal proceedings in immigration court does not impact your ability to complete and sign the Form I-914B. Certifying officials may also coordinate with government officials to request an expedited adjudication of the T visa application.

WHY IS A VICTIM REQUESTING ANOTHER DECLARATION WHEN MY AGENCY PREVIOUSLY PROVIDED ONE?

There are many circumstances in which a victim may request another Form I-914B. For example, an applicant may need an updated declaration after receiving a request for more evidence from USCIS. In addition, a victim may request another declaration to demonstrate they have complied with reasonable requests for assistance from law enforcement when applying for lawful permanent resident status (also known as a Green Card).

CAN I COMPLETE A CERTIFICATION IF THE TRAFFICKING OCCURRED OUTSIDE THE JURISDICTION MY LEA OPERATES IN?

Yes. An LEA may choose to complete the certification if the victim assisted in the LEA's detection, investigation or prosecution of acts of trafficking, regardless of where the victimization occurred. Victims may choose to report the trafficking outside of the jurisdiction where it occurred for a variety of reasons, including traumatization, relocation to escape the trafficker, fear or lack of experience with local law enforcement, or referral from other LEAs. There is no requirement that your LEA be able to prosecute the acts of trafficking in order to complete the Form I-914B. Completing the certification is a discretionary decision.

HOW DO I TERMINATE OR REVOKE A DECLARATION?

If a certifying official discovers information regarding a victim, crime, or declaration that the agency believes USCIS should be aware of, or if the official wishes to withdraw the certification, the official should contact USCIS by emailing LawEnforcement_UTVAWA.VSC@uscis.dhs.gov.

HOW DOES USCIS CONSIDER CRIMINAL HISTORY WHEN DETERMINING ELIGIBILITY FOR A T VISA?

The fact that a victim has a criminal history does not automatically preclude approval of an application for T nonimmigrant status.

USCIS reviews all available information concerning arrests, convictions, immigration violations, public safety issues, and national security concerns during the adjudication process. USCIS also considers whether there is a nexus between an applicant's criminal behavior and their victimization. USCIS also carefully considers any evidence of rehabilitation that the applicant provides with their T visa application.

If you, the certifying official, believe USCIS should know something particular about a victim's criminal history, you should include this information on the declaration or as an attachment.

CAN I RUN CHECKS (SUCH AS NATIONAL CRIME INFORMATION CENTER (NCIC)) ON INDIVIDUALS ASKING FOR A DECLARATION?

Yes, LEAs may provide USCIS with any information regarding an individual's background and criminal history. USCIS also conducts background checks on the applicant prior to adjudication of the T visa. USCIS will examine any criminality independently when assessing the applicant's admissibility and may in its discretion waive inadmissibility grounds related to criminal history.

ADDITIONAL TOOLS

Continued Presence (CP) and **Parole** are two important tools law enforcement agencies can use to provide an immediate, temporary means for victims of trafficking to stay in the United States lawfully during the course of an investigation.

CONTINUED PRESENCE¹³

CP is a temporary immigration designation available to individuals who are identified by law enforcement as victims of human trafficking who may be potential witnesses in an investigation or prosecution. CP is also available to victims who have filed civil actions under 18 U.S.C. § 1595. CP is authorized by the DHS Center for Countering Human Trafficking (CCHT) and must be sponsored by a federal law enforcement agent. State, local, tribal, and territorial law enforcement officials who would like to request CP for human trafficking victims are encouraged to work with the local Homeland Security Investigations [office](#) in their area.



An application for CP should be initiated immediately upon identification of a victim of human trafficking. CP allows victims of human trafficking to remain in the United States during an ongoing investigation or prosecution of human trafficking-related crimes committed against them.

CP is initially granted for two years and may be renewed in up to two-year increments. Recipients of CP also receive work authorization and [federal benefits and services](#)¹⁴ through the U.S. Department of Health and Human Services Office of Refugee Resettlement. CP is intended to help alleviate victims' concerns regarding removal from the United States and provide economic support so that victims are better able to cooperate with law enforcement throughout the investigation and potential prosecution. CP is a tool to stabilize victims in the immediate aftermath of victim identification, and should be pursued as soon as possible to provide short term relief. Victims of trafficking who receive CP may also qualify for the T visa. As such, CP should not be pursued in lieu of the T visa, which is a longer-term immigration benefit.

CP is available to all trafficking victims, even if a human trafficking violation is not charged, charges are never brought, or the victim is not cooperating in a law enforcement investigation. CP allows for a victim-centered approach where law enforcement recognizes that a victim's trauma history affects their response to the criminal justice process and seeks to avoid re-traumatization. This includes victim-centered practices that prioritize the survivor's feelings of safety, choice, and control.

PAROLE¹⁵

Parole may be granted by DHS to temporarily permit an otherwise inadmissible individual to enter the U.S. to serve as a witness, defendant, or cooperating source for law enforcement. DHS grants parole on a case-by-case basis and for the minimum period required to accomplish the requested purpose. For example, if a trial is 3 months long, parole may be granted for 3 months. If necessary, in extremely limited cases, DHS may decide to parole the individual's immediate family members. Parole is a tool to temporarily permit individuals entry to the U.S., but is not a replacement for the T visa, which provides nonimmigrant status to victims of trafficking and a path to permanent immigration status.

13. https://www.dhs.gov/sites/default/files/publications/continued_presence_pamphlet_ccht_final.pdf

14. Such benefits may include assistance with housing, medical services, and employment. For a complete list, please refer to <https://www.acf.hhs.gov/otip/victim-assistance/services-available-to-victims-of-trafficking>.

15. See 8 CFR 212.5; <https://www.uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-individuals-outside-united-states>.

MORE RESOURCES

FOR CERTIFYING AGENCIES AND OFFICIALS



ICE Homeland Security Investigations (HSI)

This investigative branch of DHS participates in over 120 human trafficking task forces across the country.

www.ice.gov/contact/hsi/

866-872-4973 or victimassistance.ice@ice.dhs.gov

For human trafficking investigations with a transnational nexus, contact your local HSI office or the HSI tip line at 866-347-2423 (866-DHS-2-ICE).

Office for Civil Rights and Civil Liberties (CRCL):

Contact CRCL to:

- Refer individuals who would like to file a complaint concerning abuses of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion by DHS employees and officials
- Report a violation of T visa, U visa, or VAWA confidentiality protections by a federal employee. See 8 U.S.C. 1367(a)(2).

Toll Free: 866-644-8360

crcl@dhs.gov

DHS Federal Law Enforcement Training Center (FLETC)

offers a web-based human trafficking training course which teaches law enforcement officers how to recognize human trafficking during routine duties, protect victims, and initiate human trafficking investigations.

www.fletc.gov/human-trafficking-training-program

DHS Strategy to Combat Human Trafficking

To learn more about the DHS approach to combating trafficking, see the [DHS Strategy to Combat Human Trafficking, the Importation of Goods Produced with Forced Labor, and Child Sexual Exploitation](#) (January 2020) found at: <https://www.dhs.gov/publication/strategy-combat-human-trafficking-importation-goods-produced-forced-labor-and-child>

For Additional Resources and Instructional Videos, go to the DHS Blue Campaign page:

<https://www.dhs.gov/blue-campaign>

ICE Victim Assistance Specialist or Coordinator

866-872-4973

victimassistance.ice@ice.dhs.gov

Request Technical Assistance via the T and U Visa Hotline for Certifying Agency Inquiries:

240-721-3333

This line is for certifying agencies only.

Request Training:

T_U_VAWATraining@uscis.dhs.gov

Ask a Question about a Specific Case, Withdraw/Disavow a Signed Form, or Report Concerns about Fraud or Misuse of T Visas:

LawEnforcement_UTVAWA.VSC@USCIS.dhs.gov

This e-mail is for law enforcement personnel only.

DHS Center for Countering Human Trafficking

The CCHT is the first unified, intercomponent coordination center for countering human trafficking and the importation of goods produced with forced labor. The CCHT processes and authorizes Continued Presence applications from federal law enforcement agents.

info@ccht.dhs.gov

Immigration and Customs Enforcement (ICE) Resources:

ICE TOOL KIT FOR PROSECUTORS

<https://www.ice.gov/doclib/about/offices/osltc/pdf/tool-kit-for-prosecutors.pdf>

ICE LAW ENFORCEMENT SUPPORT CENTER

802-872-6050

www.ice.gov/contact/lesc

LOCAL ICE OFFICES

Enforcement and Removal Operations

www.ice.gov/contact/ero/

OFFICE OF THE PRINCIPAL LEGAL ADVISOR

www.ice.gov/contact/opla/

APPENDIX A

T VISA PROCESS

The graphic below outlines the general process to seek a T visa, from the victim's initial encounter with law enforcement to USCIS' final determination.

The time between a victim's initial filing of the T visa application and USCIS' final adjudication of the application (resulting in either an approval or denial) can vary over time due to several factors, including USCIS staffing levels, resource availability, and the number and complexity of applications.

By law, USCIS cannot provide T nonimmigrant status to more than 5,000 principal victims per year. This annual cap does not include visas issued to eligible relatives of the victim. The T visa cap has never been reached in the history of the program.

Information about T visa applicants is protected by specific privacy and confidentiality laws.¹⁶

A T nonimmigrant may apply for lawful permanent residence (also known as a Green Card) after three years of continuous physical presence in the U.S. or after continuous physical presence in the U.S. during the investigation or prosecution which is now complete, whichever occurs earlier.¹⁷

There is no limit on the number of T visa-based Green Cards that USCIS may issue annually.

Cooperation STEP 1	Filing STEP 2	Approval STEP 3	Green Card STEP 4
Victim assists law enforcement in the detection, investigation, and/or prosecution of a trafficking crime, unless an exception or exemption applies.	Victim applies for T visa with USCIS, potentially including law enforcement declaration in the application.	USCIS reviews the T visa application and requests additional evidence as needed.	After at least 3 years in T status or once the investigation or prosecution is concluded, victim applies to become lawful permanent resident
Victim may request law enforcement declaration via Form I-914, Supplement B; law enforcement decides whether to sign.		If eligible, USCIS approves victim's T visa.	If eligible, USCIS approves victim's application for permanent residency.

16. See 8 U.S.C. 1367.

17. 8 CFR §245.23(a)(3); <https://www.uscis.gov/green-card/green-card-eligibility/green-card-a-victim-trafficking-t-nonimmigrant>

APPENDIX B

QUALIFYING RELATIVES

FAMILY MEMBERS

Certain qualifying family members of the principal victim may also be eligible for a T Visa. If the principal applicant is under the age of 21 years old, qualifying relatives include:

- the principal's spouse;
- the principal's unmarried child(ren);
- the principal's parent(s); and
- the principal's unmarried siblings under the age of 18 years.

If the principal applicant is over the age of 21 years old, qualifying relatives include:

- the principal's spouse; and
- the principal's unmarried child(ren)

In certain circumstances, the following relatives may be eligible for a T visa if they are in present danger of retaliation as a result of the principal applicant's escape from trafficking or cooperation with law enforcement:

- the principal's grandchild;
- the principal's spouse's child (if not otherwise already eligible as the principal's child) and
- the principal's sibling (if not otherwise already eligible, such as those over the age of 18 or married), and the principal's niece or nephew.

Family members seeking derivative T visas are subject to the same criminal background review, fingerprint checks, and immigration status checks as the principal applicant. Therefore, USCIS may deny a derivative's case based on the derivative's adverse criminal or immigration background, even if the principal applicant's filing is approved.

DISCLAIMER

The information provided in this guide is intended for general educational purposes only and is not intended to provide legal advice. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner. The information in this guide may or may not apply to individual circumstances. Readers should review local policies and seek legal counsel regarding any specific applications of federal and state laws. Additionally, this guide was last updated in October 2021. As laws and regulations change, portions may change or become obsolete.